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House Bill 4064 (Substitute S-1)
Sponsor: Representative Kurt Heise
House Committee: Judiciary
Senate Committee: Judiciary

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CONTENT

The bill would amend the Revised Judicature Act to do the following:

- **Authorize courts to provide enhanced (electronic) access to court records and to charge a reasonable fee (except to another court or a public agency) for enhanced access.**
- **Authorize courts to charge a reasonable fee associated with record creation, reproduction, retrieval, and retention, except on-site retrieval and inspections.**
- **Require the State Court Administrative Office (SCAO) to establish and maintain record management policies and procedures for the courts, subject to Supreme Court rules.**
- **Require courts to follow SCAO policies and procedures with regard to document disposal.**
- **Delete requirements regarding document and record destruction.**

The bill is tie-barred to House Bill 4532, which contains the same provisions as House Bill 4064 (S-1) regarding enhanced access and SCAO record management policies. House Bill 4532 also would require probate court clerks to have possession of and maintain probate court records in accordance with Supreme Court rules, and would require the original notes and index of probate court testimony to be kept according to Supreme Court rules.

Enhanced Access & Fees

House Bill 4064 (S-1) would permit a court to offer enhanced access to court records. Before providing enhanced access, a court would have to adopt an enhanced access policy under the requirements prescribed by the Supreme Court. "Enhanced access" would mean access to a court through electronic means for pleadings, practice, and procedure, including access to case records as prescribed by Supreme Court rules.

A court could provide enhanced access to another court or a public agency in accordance with a written agreement, but could not charge a fee to another court or public agency. The written agreement would have to contain the following:

- A statement prohibiting the other court or the public agency from selling or providing access to the system's output to a third party, except as permitted by the written agreement.

- A statement specifying the public purpose for the court's provision of access to or output from the system.
- Provisions regarding the return of output from the system.
- The duration of the agreement.
- The method by which either party could rescind or terminate the agreement.

A court could charge a reasonable fee, as established by the Supreme Court, for providing enhanced access.

If the Supreme Court amended or adjusted the fee established for providing enhanced access, the SCAO would have to notify the chairpersons of the Senate and House of Representatives Appropriations Subcommittees on the Judiciary within 30 days after the change took effect.

("Reasonable fee" would mean a charge calculated to enable a court to recover over time those operating expenses directly related to the court's provision of enhanced access. "Operating expense" would include a court's direct cost of creating, maintaining, processing, and upgrading access to the court through electronic means, including the cost of computer hardware and software, system development, employee time, and the actual cost of providing access.)

SCAO Record Management Policy

The bill would require the State Court Administrative Office (SCAO) to establish and maintain records management policies and procedures for the courts, including a records retention and disposal schedule, in accordance with Supreme Court rules. The record retention and disposal schedule also would have to be developed and maintained according to the Michigan Historical Commission law.

Subject to the Records Reproduction Act, a court could dispose of any record as prescribed above. A record, regardless of its medium, could not be disposed of unless it had been in the court's custody for the established retention period.

A court could assess a reasonable fee associated with the creation, reproduction, retrieval, and retention of its records only as prescribed by the Supreme Court. A court could not, however, charge a fee to retrieve and inspect a record on site.

("Record" would mean information of any kind that is recorded in any manner and that has been created by a court or filed with a court in accordance with Supreme Court rules.)

Reproduced Records & Record Destruction

Under the Section 2137 of the Revised Judicature Act, if a public officer reproduces a court record under to the Records Reproduction Act (RRA), the officer may offer the original records for placement in the State archives. If the offer is not accepted within 30 days, the court may dispose of or destroy the record as provided in statute, but not before the record has been in the court's custody for at least six years.

If a county board passes a record reproduction resolution, a probate judge in that county may reproduce records according to that resolution. However, that judge must have a copy or a duplicate kept in another building with any equipment that is necessary to display the record. The judge then may order the original record destroyed. The original file of an estate proceeding may be destroyed six years after the date of the discharge of the fiduciary is filed, or 10 years after the last document is filed, whichever happens first.

Courts other than district courts may destroy a reporter or recorder note, tape, or recording 15 years after it was made for felony cases, or 10 years after it was made for all other cases. The item also may be destroyed one year after a transcript of it was filed. Circuit courts may order destruction of a file and record for a case that has had no action taken in 25 years if: 1) the judgment order or decree is reproduced under the RRA, or is separated and retained, and the original or reproduction is made available for public inspection; and 2) the file or record is offered to the Michigan Historical Commission, subject to the order of destruction.

The bill would delete all of these provisions.

Section 2137 also provides that a reproduction under the RRA, or a reproduction consisting of a printout or other output readable by sight is admissible the same as an original in a court, commission, or administrative body. The reproduction has the same force and effect as the original, and must be treated as an original for purposes of admissibility in evidence. A certified or authenticated copy of that reproduction also must be admitted into evidence equally with the original production. The bill would retain these provisions.

Under Section 8344, a court may destroy documents, records, recordings, and notes, not less than six years after the entry of a judgment in a civil action, ordinance violation case, or a criminal case, in the district court. The court may order destruction of records related to a civil infraction not less than three years after the entry of a finding. A court may order destruction of a note, tape, and recording, when a transcript of it has been filed with the court for one year. After disposal, the register of actions, or a certified reproduction of the register of actions, is the official record of the action and judgment.

The bill would delete all of these provisions, but retain provisions regarding the validity and enforceability of judgments. Specifically, the Act provides that validity and enforcement are not affected by the destruction of the piece of paper upon which a judgment is entered, but the register of actions itself, or a certified reproduction of the register of actions, is a complete replacement of the judgment and records of the action.

Municipal Court Records

The bill would repeal Public Act 66 of 1949, which requires all files and papers, other than dockets and books of journal entry, that relate to prosecutions in a municipal court to be filed for a certain period of time, specified below.

For offenses arising under the charter, or any ordinance or regulation of any city, documents do not need to be filed for longer than six years from the date the complaint was filed, unless a court orders otherwise (in which case the documents may be destroyed upon court order). For offenses arising under State law, documents must be filed for 10 years from the date of sentence, acquittal, dismissal, or other final action by the court, and may then be destroyed according to court order. For civil actions, documents must be retained for seven years from the date of final judgment, or order or dismissal of the action, except where the defendants were serving in the armed forces or were nonresidents of the State at the time of commencement of the action, in which case the period is 10 years.

MCL 600.2137 et al.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

Local courts could incur expenses associated with implementation of electronic record-keeping as authorized under the bill. However, the information technology investments enabling these practices would not be solely attributable to the bill. Some of the costs of

these investments could be partially recouped through "reasonable fees" that could be charged in some cases (to nonpublic entities) for "enhanced access".

Fiscal Analyst: Dan O'Connor

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.